

MONTANA LEGISLATIVE HISTORY

Chapter 338 19 1995

Bill H _____ S 185 Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) 3/02 _____ C

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) 1/24 _____ C

_____ C

_____ C

_____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

SB 183 INTRODUCED BY WELDON, ET AL.

ESTABLISH A SCENIC BYWAYS PROGRAM; AUTHORIZE AN ADVISORY COUNCIL FOR THE SCENIC BYWAYS PROGRAM AND DESCRIBE THE COUNCIL'S DUTIES

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

1/18	INTRODUCED		
1/18	FIRST READING		
1/18	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/19	FISCAL NOTE REQUESTED		
1/23	FISCAL NOTE RECEIVED		
1/24	FISCAL NOTE PRINTED		
2/02	HEARING		
2/06	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY		
	DIED IN COMMITTEE		

SB 184 INTRODUCED BY VAN VALKENBURG, ET AL.

PROVIDE A REFUNDABLE INCOME TAX CREDIT AGAINST TAXES OWED FOR TAX YEAR 1995 TO TAXPAYERS WHO OWNED AND OCCUPIED DWELLINGS IN MONTANA FOR AT LEAST 7 MONTHS DURING CALENDAR YEAR 1994

1/18	INTRODUCED		
1/18	FIRST READING		
1/18	REFERRED TO TAXATION		
1/19	FISCAL NOTE REQUESTED		
1/24	FISCAL NOTE RECEIVED		
1/24	FISCAL NOTE PRINTED		
2/01	HEARING		
3/29	MISSED TRANSMITTAL DEADLINE FOR 71ST DAY		
	DIED IN COMMITTEE		

SB 185 INTRODUCED BY VAN VALKENBURG

GENERALLY REVISE PROCESS BY WHICH A HABITUAL TRAFFIC OFFENDER IS PENALIZED

BY REQUEST OF THE DEPARTMENT OF JUSTICE

1/18	INTRODUCED		
1/18	FIRST READING		
1/18	REFERRED TO JUDICIARY		
1/19	FISCAL NOTE REQUESTED		
1/24	HEARING		
1/24	FISCAL NOTE RECEIVED		
1/24	FISCAL NOTE PRINTED		
1/24	COMMITTEE REPORT—BILL PASSED		
1/25	2ND READING PASSED	48	1
1/26	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/27	FIRST READING		
1/27	REFERRED TO JUDICIARY		
3/02	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	99	0
3/27	3RD READING CONCURRED	97	1
	RETURNED TO SENATE WITH AMENDMENTS		
3/30	2ND READING AMENDMENTS CONCURRED	50	0
3/31	3RD READING AMENDMENTS CONCURRED	48	0
4/04	SIGNED BY PRESIDENT		
4/05	SIGNED BY SPEAKER		

4/06 TRANSMITTED TO GOVERNOR
 4/07 SIGNED BY GOVERNOR
 CHAPTER NUMBER 338
 EFFECTIVE DATE: 10/01/95

SB 186 INTRODUCED BY BECK

EXPAND AUTHORITY OF THE DEPARTMENT OF STATE LANDS TO RECLAIM
 ABANDONED HARD-ROCK AND OPENCUT MINE SITES
 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

1/18	INTRODUCED		
1/18	FIRST READING		
1/18	REFERRED TO NATURAL RESOURCES		
1/19	FISCAL NOTE REQUESTED		
1/23	FISCAL NOTE RECEIVED		
1/24	FISCAL NOTE PRINTED		
1/25	HEARING		
2/02	COMMITTEE REPORT—BILL PASSED		
2/03	2ND READING PASSED	49	0
2/04	3RD READING PASSED	40	5
	TRANSMITTED TO HOUSE		
2/06	FIRST READING		
2/06	REFERRED TO NATURAL RESOURCES		
3/10	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/29	2ND READING CONCURRED	90	3
3/30	3RD READING CONCURRED	90	7
	RETURNED TO SENATE		
3/31	SIGNED BY PRESIDENT		
4/03	SIGNED BY SPEAKER		
4/03	TRANSMITTED TO GOVERNOR		
4/05	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 329		
	EFFECTIVE DATE: 04/05/95		

SB 187 INTRODUCED BY BROWN, ET AL.

AUTHORIZE THE DEPARTMENT OF JUSTICE TO OPERATE AND MAINTAIN
 AN AUTOMATED ACCOUNTING AND REPORTING SYSTEM FOR VIDEO
 GAMBLING MACHINES

BY REQUEST OF THE GOVERNOR AND THE DEPARTMENT OF JUSTICE

1/18	INTRODUCED		
1/18	FIRST READING		
1/18	REFERRED TO BUSINESS & INDUSTRY		
1/19	FISCAL NOTE REQUESTED		
1/25	FISCAL NOTE RECEIVED		
1/26	FISCAL NOTE PRINTED		
1/31	HEARING		
2/16	REVISED FISCAL NOTE RECEIVED		
2/16	REVISED FISCAL NOTE PRINTED		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	26	24
2/20	3RD READING FAILED	25	25
2/20	RECONSIDERED PREVIOUS ACTION AND PLACED BACK ON 3RD READING	34	16
2/21	3RD READING PASSED	28	22
	TRANSMITTED TO HOUSE		
2/22	FIRST READING		
2/22	REFERRED TO BUSINESS & LABOR		
3/10	HEARING		

SENATE BILL NO. 185

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE PROCESS BY WHICH A HABITUAL TRAFFIC OFFENDER IS PENALIZED; PROVIDING FOR ADMINISTRATIVE REVOCATION OF A HABITUAL TRAFFIC OFFENDER'S DRIVING PRIVILEGES; PROVIDING A METHOD FOR AN OFFENDER TO CONTEST THE DECLARATION; PROVIDING THAT CERTIFIED DRIVING RECORDS ARE EVIDENCE OF CONVICTIONS; PROVIDING FOR A MANDATORY MINIMUM SENTENCE FOR A PERSON DRIVING WHILE A LICENSE IS REVOKED BECAUSE OF A HABITUAL TRAFFIC OFFENDER DECLARATION; AMENDING SECTIONS 61-11-204, 61-11-207, 61-11-210, 61-11-211, 61-11-212, AND 61-11-213, MCA; AND REPEALING SECTIONS 61-11-205, 61-11-206, 61-11-208, AND 61-11-209, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-11-204, MCA, is amended to read:

"61-11-204. Department's duties. ~~Whenever it appears from~~ (1) If the records maintained in by the department show that a person's driving record brings ~~him~~ the person within the definition of ~~a~~ a habitual traffic offender, ~~as defined in 61-11-203(2),~~ the department shall:

(a) declare the person a habitual traffic offender;

(b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and

(c) notify the person in writing of the declaration and revocation.

(2) The notice must be sent by first-class mail to the most current address on record with the department. The notice must include a certified copy of the ~~forthwith certify two copies of that person's driving record and two copies of all relevant abstracts of conviction convictions and bond forfeitures. One copy of the record and abstracts shall be certified to the attorney general and one copy of the record and abstracts shall be certified to the county attorney for the county wherein the person is found. If the person is not licensed by Montana to drive a motor vehicle but is licensed in another state, the department may certify the copy of the records and abstracts to the attorney general and also to the county attorney for the county in which the person is found or, in the alternative, to the county attorney for the county of~~

1 ~~Lewis and Clark.~~ The notice must inform the person of the right under 61-11-210 to appeal the declaration
2 and revocation. Service of the notice is complete upon mailing.

3
4 **Section 2.** Section 61-11-207, MCA, is amended to read:

5 **"61-11-207. Abstracts admissible as evidence.** ~~Official~~ A copy of a driving record maintained by
6 the department, including abstracts of the records of convictions and bond forfeitures in the custody of the
7 department, certified in writing by the department to be a correct account of the said convictions and bond
8 forfeitures its records, may be admitted in evidence in any a judicial proceeding under this part upon
9 establishing the proper foundation. A certified driving record is evidence that the person was convicted
10 of each offense shown in the record. A copy of a driving record may be a copy of an original paper record,
11 a digital image of a paper record, or an electronically transmitted copy of a record."

12
13 **Section 3.** Section 61-11-210, MCA, is amended to read:

14 **"61-11-210. Court hearing Appeals.** (1) A person declared to be a habitual traffic offender may
15 file a petition in the district court in the county in which the person resides, or in Lewis and Clark County
16 if the person is not a resident of the state, challenging the declaration and revocation. The petition must
17 be filed within 30 days after the person received notice under 61-11-204. Receipt under 61-11-204 is
18 presumed to be on the third day after the date of mailing. After the petition is filed, a copy must be
19 promptly served on the county attorney of the county in which the petition was filed. The county attorney
20 shall represent the department in the proceeding. Proof of service must be filed with the clerk of the court
21 prior to a hearing or grant of relief. Untimely service or lack of service upon the county attorney waives
22 the right to a hearing. The filing of the petition does not stay enforcement of the revocation.

23 (2) Upon receipt from the county attorney of notice of the petition, the department shall give the
24 county attorney a certified copy of the abstracts of the records of convictions and bond forfeitures upon
25 which the habitual traffic offender declaration was based.

26 (3) A hearing date must be set and at least 10 days' notice of the date must be given to the
27 parties. The scope of the hearing is limited to whether ~~At the time and place designated in the order, the~~
28 ~~court shall hold a hearing upon the show cause order. If the court finds that the defendant petitioner is not~~
29 ~~the person named in the verified complaint or that he is not~~ certified abstracts of convictions and bond
30 forfeitures upon which the habitual traffic offender declaration was based and whether the petitioner is an

1 a habitual traffic offender as defined in 61-11-203(2), the proceedings shall be dismissed. The petitioner
2 has the burden of proving that the department's actions are invalid or that its records are erroneous.

3 (4) If the court finds that the defendant petitioner is the same person named in the verified
4 complaint declared by the department to be a habitual traffic offender and that the defendant petitioner is
5 an a habitual traffic offender as defined in 61-11-203(2), the court shall so find and adjudge the defendant
6 an habitual traffic offender, and by appropriate order direct the person so adjudged to surrender to the court
7 his license to operate a motor vehicle on the streets and highways of this state dismiss the petition. If the
8 court finds that the petitioner is not the person declared by the department to be a habitual traffic offender
9 or that the petitioner is not a habitual traffic offender, the court shall grant the petition and provide the
10 petitioner with appropriate relief.

11 (5) Upon a finding adverse to the defendant petitioner, the clerk of the court ~~wherein the hearing~~
12 ~~is held~~ shall file with the department a copy of the court's order, together with the defendant's petitioner's
13 driver's license if the license has not been previously surrendered. If the ~~proceeding is dismissed~~ petition
14 is granted, the clerk of the court ~~wherein the hearing is held~~ shall file with the department a copy of the
15 court's order ~~dismissing the proceeding, which~~ granting the petition.
16 The order shall must state the grounds upon which the dismissal relief was based, granted and shall must
17 specify the court findings on the conviction points, if any, which that have been accrued by the defendant
18 petitioner. The department shall then correct the petitioner's driving record to comport with the court's
19 specific findings."

20
21 **Section 4.** Section 61-11-211, MCA, is amended to read:

22 **"61-11-211. Department to revoke license of habitual offender -- ~~method of removal of points upon~~**
23 **~~revocation. Upon receipt of a court order declaring an individual a~~ After it declares a person to be a habitual**
24 **~~offender, the department shall revoke the person's driver's license or driving privilege of the individual~~**
25 **~~named in the order for a period of 3 years from the date of the order declaration, subject to the provisions~~**
26 **~~of 61-2-302. Additionally, the~~ The department shall remove from that individual's the person's record those**
27 **~~the habitual offender points that were certified to the county attorney in the certification required by~~**
28 **~~61-11-204 upon which the habitual traffic offender designation was based."~~**

29
30 **Section 5.** Section 61-11-212, MCA, is amended to read:

1 **"61-11-212. Penalties.** A person who has been ~~adjudged a~~ declared to be a habitual traffic offender
2 may not be issued a license to operate a motor vehicle in this state until:

3 (1) a period of 3 years has elapsed from the date of the ~~final order of the court adjudging the~~
4 ~~person a habitual traffic offender~~ declaration, subject to the provisions of 61-2-302;

5 (2) the person has met the requirements of all applicable laws and rules relating to the licensing
6 of motor vehicle operators in this state; and

7 (3) the person files with the department, and maintains for a period of 3 years, proof of his
8 financial responsibility in the limits required by law."
9

10 **Section 6.** Section 61-11-213, MCA, is amended to read:

11 **"61-11-213. Habitual traffic offender operating motor vehicle guilty of misdemeanor.** A person
12 ~~found~~ who is declared to be a habitual traffic offender under this part ~~and~~ who operates a motor vehicle
13 in this state ~~while the order of the court prohibiting the operation remains in effect~~ during the period of
14 revocation of the person's driver's license or driving privileges is guilty of a misdemeanor and upon
15 conviction shall be imprisoned for a period of not less than 14 days or more than 1 year or fined not more
16 than \$1,000, or both, and the department, upon receiving a record of the conviction of a person under this
17 section, shall extend the period of revocation for an additional 1 year. However, in cases in which the
18 prohibited operation of a motor vehicle by a habitual traffic offender is necessitated in a situation of extreme
19 emergency in order to save life, limb, or property, ~~he~~ the person may not be considered guilty of a violation
20 under this part."
21

22 **NEWSECTION. Section 7. Repealer.** Sections 61-11-205, 61-11-206, 61-11-208, and 61-11-209,
23 MCA, are repealed.
24

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0185, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the process by which a habitual traffic offender is penalized.

ASSUMPTIONS:

1. The Department of Justice will experience minimal costs in implementing this bill and those costs can be absorbed in their current budget.

FISCAL IMPACT:

Passage of SB0185 will have no fiscal impact on state government.

Dave Lewis 1-23-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Fred Van Valkenburg 1-24-95
FRED VAN VALKENBURG, PRIMARY SPONSOR DATE

Fiscal Note for SB0185, as introduced

SB 185

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By SENATOR BRUCE CRIPPEN, Chair, on January 24, 1995, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 165, SB 175, SB 185
Executive Action: SB 148, SB 185, SB 165, SB 175, SB 149

{Tape: 1; Side: A; Approx. Counter: 0.0}

HEARING ON SB 165

Opening Statement by Sponsor:

SENATOR GARY AKLESTAD, Senate District 44, in Northcentral Montana, gave the committee a brief overview of SB 165. The bill would apply only to post-conviction petitions filed in criminal matters in the State Court. It would amend Montana codes to clarify that petitions for post-conviction relief may be amended

Ms. Baker said that in any case the court would have the discretion to set a deadline but this would simply require that the deadline be set if so requested by the state. The court could start right off with a scheduling order setting the deadlines for amended petitions.

SENATOR HALLIGAN questioned what if the state did not request it.

Ms. Baker said that the state would not, but that they would have no objection if he wanted to insert, "or on its own motion."

Closing by Sponsor:

SENATOR AKLESTAD closed on SB 165 by emphasizing that presently and in the past, Montana has a problem with lingering death penalty cases. This bill would not be retroactive, he said, but would help in many cases in the future. He said the bill would be beneficial not only to society but to the judicial process itself, which now has a black eye because of the processes and the length of time involved. SB 165 would make the process more efficient, he said, and perhaps correct one of the wrongs in the procedure. He urged the committee to seriously consider the bill and recommended a Do Pass resolution.

CHAIRMAN CRIPPEN concluded the hearing and assured the sponsor that all bills are considered seriously by this committee.

HEARING ON SB 185

Opening Statement by Sponsor:

SENATOR FRED VAN VALKENBURG, Senate District 32, Missoula, sponsor of SB 185 opened the discussion telling the committee that the bill was at the request of the Department of Justice. The bill would do the following, he said: 1) convert the means by which a person would be declared a traffic offender from a judicial to an administrative proceeding, 2) provide that a person who has been declared an habitual traffic offender will have the right to appeal that decision to a district court thereby preserving that person's access to the courts to contest the decision that has been made, and 3) provide for a minimum sentence with respect to a violation of the habitual offender law for 14 days in the county jail as opposed to no minimum under the current law.

Proponents' Testimony:

Brenda Nordlund, an assistant attorney general working with the Motor Vehicle Division, represented the Montana Department of Justice and spoke in favor of the bill. She said the bill would streamline the process by which they declare habitual traffic offenders. A habitual traffic offender is someone who over the

course of three years has accumulated 30 traffic conviction-points on the Motor Vehicle Division records. A DUI counts 10 points; she said, reckless driving counts 5; failure to maintain insurance is 5; and driving while suspended or revoked is a 6-point ticket. In order to obtain 30 points in three years, she estimated it would be a motorist with a great deal of disrespect for the motor vehicle laws. The current process is cumbersome, she said, because it involves not only the MVD, but requires the co-operation of county attorneys and law enforcement merely to initiate the process declaring someone an habitual offender. The advantage of the bill is that law enforcement would no longer be involved in the process. Only a call to the county attorney is needed in the event that the motorist challenges the accuracy of the records maintained by the MVD. Their records are the result of disposition copies of court records of convictions at the justice court level and the district court level. There are a substantial number of habitual traffic offenders, she maintained, quoting more than 600 last year. She urged a Do Pass recommendation for SB 185.

Mike McGrath, County Attorney for Lewis and Clark County, representing the County Attorneys' Association, spoke in support of SB 185. He told the committee that under the current system when a person accumulates 30 points, the MVD contacts the county attorney's office which is required to initiate a court proceeding and file a lawsuit. They get the sheriff to serve papers on the offender and have at least one court hearing. He liked to think of the this bill as a significant paper reduction act. There are a significant number of the cases taken to court, and he said they are rarely contested. These cases clog the courts and create unnecessary paperwork, he contended. This would be a better way to handle these cases administratively.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

SENATOR VAN VALKENBURG said in closing that the 14-day minimum was appropriate in this case because an habitual traffic offender is someone who has consistently violated the serious traffic laws in the State of Montana. We have minimums for DUI's, he said, that are less in some cases than this, but 14 days would put some teeth into the law with respect to a violation of law, which is driving after one has been declared an habitual traffic offender. He asked to keep that in the bill, and urged favorable consideration of the bill.

DATE 1-24-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 165, SB 175, SB 185

< ■ > PLEASE PRINT // < ■ >

Check One

Name	Representing	Bill No.	Support	Opp
Beth Baker	Dept of Justice	165	✓	
Dean Roberts	Dept of Justice - mvd	185	✓	
Brenda Nordlund	Dept of Justice	185	✓	
For Silvers	LPC #124 Private Practice	175	✓	
Mike McGrath	CA ATTYS ASSOC	165, 175	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 2, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: None

Members Absent: Rep. Brad Molnar

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 133, SB 185, SB 189, SB 218
Executive Action: SB 132 BE CONCURRED IN
SB 143

{Tape: 1; Side: B; Approx. Counter: 35.1}

Closing by Sponsor:

SEN. CHRISTIAENS closed by saying this was a complicated bill because of all the different time frames. The reason for the bill was to clarify some of the things enacted into law in 1993 which have been difficult for the courts to interpret. He said he did not want the committee left with idea that this was a compromise within the Senate. When the bill appeared before the Senate Judiciary Committee, before the hearing was half through, there was only one member of the committee left to hear the bill for one hour. It was rewritten by that committee member, so only one part of the group was invited to participate in reaching a compromise. He asked that the bill be passed as it came out of the Senate rather than to deal with the proposed amendments. He felt they could live with the bill as it came out of the Senate and those he had talked with concurred in that; therefore he asked that it be passed without the amendments.

CHAIRMAN CLARK resumed the chair.

HEARING ON SB 185

Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, SD 32, brought SB 185 at the request of the Department of Justice. The bill would provide for conversion of a procedure for determination of an habitual offender from a judicial proceeding to an administrative proceeding. It would provide a judicial means of appeal for someone who would disagree with such a decision by the Department of Justice and it would establish a minimum sentence of a violation of the habitual offender law of a 14-day jail sentence. The reason for the bill was to reduce administrative overhead. The habitual offender designation is one that is routine once someone has accumulated 30 points under the traffic violation point system. He described the process under current law and requirements of the department. He described the process under the proposed change in SB 185.

Proponents' Testimony:

Brenda Nordlund, Department of Justice, said this bill would reduce bureaucracy and streamline the process in declaring someone a habitual traffic offender. She outlined the traffic offenses and the numbers of points assigned to each. She described the current process as cumbersome. They desired to reverse the process so that when the department's computer notified them that the 30 points had been attained they would be authorized to notify the habitual offender that their drivers license had been revoked for three years. It would be incumbent upon the individual motorist to appear in district court to file a petition to challenge the accuracy of the records. It would be

at this point that the county attorney would become involved in defense of the record. She continued to clarify the proposed change to the system and the savings it was designed to bring. She said it was important to set a minimum sentence for habitual offenders because they do not respect Montana's traffic laws. Under current law there is no minimum sentence of the person who drives after having been declared an habitual traffic offender.

Opponents' Testimony:

None

{Tape: 1; Side: B; Approx. Counter: 48.6}

Questions From Committee Members and Responses:

REP. SHIELL ANDERSON asked if he heard correctly that revocation would begin three days after the notification was sent.

Ms. Nordlund said she spoke incorrectly on that and stated that the way the bill was currently drafted, service of the notice is complete upon mailing. Section 4 of the bill which would amend 61-11-211, MCA, did not state that there would be any delay. The revocation would then be effective as soon as the notice was mailed.

REP. ANDERSON asked if the person then had 30 days to contest the decision. If the person did not actually receive notice and came in 45 days later (for instance), could they still prove their innocence.

Ms. Nordlund replied that the county attorney representing the department would have the discretion whether or not they would interpose a 30-day time bar defense. It would be an allowable defense. It was similar to the implied consent statute. Typically there is a time bar, but there might be an equitable argument that would allow an individual to go forward.

REP. DANIEL MC GEE referred to the statistics which left 223 habitual offender cases which had not been adjudicated by the courts. He asked if any of these cases which were heard by a court involved a person identified not to be an habitual offender.

Ms. Nordlund replied in general terms that some courts look at the issue of 30 points in three years to be a rolling three-year period. So if an amount of time had passed since the department declared them to be habitual offenders, at the time the hearing would be held, it would have dropped off the first end conviction effectively becoming three years from the date of the hearing instead of three years from the date of the certification. The court might dismiss in that example.

REP. MC GEE asked where in the bill the department wanted to provide for the minimum sentencing.

Ms. Nordlund directed his attention to page 4, section 6, line 15.

REP. MC GEE agreed with the principle but asked her to address due process issues.

Ms. Nordlund answered that the way motor vehicle records are kept, the department does not create any conviction points against an individual's record until they receive the disposition copy of the citation from a court. For each and every point accumulated on the record, the individual has had an opportunity to contest the criminal citation and waive the opportunity or contest it. If found guilty, the court would provide the department with the disposition.

REP. MC GEE reiterated that the department would only have a tally and that each and every citation would have been afforded due process.

Ms. Nordlund said that was correct and that they would be given the additional provision to challenge the accuracy of the record at the time of revocation.

REP. MC GEE asked how they will guarantee that an individual will receive the mailed notice.

Ms. Nordlund replied that the whole system is based on the fact that individuals at the time they apply for the drivers license give an accurate address. At the time they are cited, they give the officer a correct address. Business is done throughout the state in many cases by first class mail. The individuals would have notice of the potential consequence of attaining 30-points. Due process issues have been examined in other states and it has been found that first class mail is an appropriate notice provision, particularly when the offense is only a misdemeanor.

REP. MC GEE asked if he shared the belief that was defensible in court.

SEN. VAN VALKENBURG believed that most judges would accept the proof that the state offered that the notice was sent by first class mail and was presumed to be received by the defendant. Some judges would make it more difficult, but by and large they are successful in convincing judges that people have received notice.

{Tape: 2; Side: A}

REP. MC GEE asked if he could see any way to strengthen it by some internal process in the department.

SEN. VAN VALKENBURG did not know of any. His opinion about the question regarding the difference between the number of people identified and the number of people declared as habitual offenders, was the number of people on whom they could not use personal service to get them into court. Some of them refuse to sign for certified mail. Even if the notice were made by certified mail, he was not sure it would improve it internally.

REP. LIZ SMITH asked if a person who had been accused would be obligated to pay for the court fees even though the court might eventually dismiss their case.

SEN. VAN VALKENBURG answered that if the court were to dismiss or to order the department to strike its determination that someone was an habitual offender, he could not imagine where the court would require the appellant to pay any court costs.

REP. SMITH said she was referring to recently passed legislation that anyone using the court system would have to pay a filing fee to fund the electronic system which would transmit their records. Even if they were innocent, they would be requested to pay.

SEN. VAN VALKENBURG said he was not familiar with that bill. He said he would trust the committee's judgment in that regard.

REP. HURDLE asked if they could assume that when someone had reached 30 points, they had been through other programs.

SEN. VAN VALKENBURG said it depended on which offenses they had committed to accumulate the points. The vast majority had accumulated their points through DUI convictions or driving while suspended. With some, the assumption could be made that they had been in various programs.

REP. HURDLE suggested a case where someone had accumulated 30 points without a DUI and asked if there was any kind of rehabilitation available to them.

Ms. Nordlund said the demands on the motor vehicle driver exam stations is quite high. There was a bill passed, HB 248, which would lengthen the term of drivers license and also allow drivers training programs. The purpose of that bill was to eliminate some of the demand on driver exam stations so that they could go back to counseling problem drivers. They envision that once that demand has been dissipated because they had converted to an eight-year license and once a person attained 20 points, they would be brought in for a counseling session along with educational films.

REP. LOREN SOFT asked for a description of the procedure once the printout is obtained showing the 30 points accumulation.

Ms. Nordlund replied that the letter would instruct the person to surrender the drivers license. They no longer have law

enforcement to pick up the license. Dispatch would have the information that that license is revoked on their computer system if the person is stopped by law enforcement.

REP. SOFT asked if it was correct that unless the person was picked up on a violation, they would continue to drive.

Ms. Nordlund said that any person can violate the revocation order or suspension order and continue to drive unlawfully. The fact that they have a physical drivers license in their possession, if that license is invalid, gives them no privilege on the highways.

REP. SOFT restated his question and she agreed that was reality.

REP. SOFT asked about the provision on page 4, line 15 for imprisonment if they are picked up with a revoked drivers license.

Ms. Nordlund said it referred to the county jail.

REP. SMITH asked if there was a fiscal note on SB 185.

Ms. Nordlund said there was not because they were talking about first class postage. If there was a concern about jail time, the committee might want to see what the impact of that would be.

REP. SMITH asked what percent per year would warrant the incarceration period provided for in this bill.

Ms. Nordlund did not have that information but said they would provide it.

Closing by Sponsor:

REP. VAN VALKENBURG closed with the fiscal note information that costs would be absorbed within the department and there would be no fiscal impact on state government.

{Tape: 2; Side: A; Approx. Counter: 12.9}

EXECUTIVE ACTION ON SB 132

Motion: REP. GRIMES MOVED SB 132 BE CONCURRED IN.

{Tape: 2; Side: A; Approx. Counter: 17.9}

Discussion: REP. MC GEE stated he would not want to see key man insurance jeopardized. He was not convinced that the current language in the bill would address both the concerns of the spouse and also the key man.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE

3/2/95

BILL NO. SB 185

SPONSOR(S)

Sen Van Valkenburg

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Brenda Nordlund	D Justice	✓	
JOE ROBERTS	MT. CTR. ATTOR ASSOC	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 13, 1995, at
8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: NONE
Executive Action: SB 133 TABLE
SB 185 BE CONCURRED IN AS AMENDED
SB 189 BE CONCURRED IN AS AMENDED
SB 212 BE CONCURRED IN
SB 402 BE CONCURRED IN AS AMENDED
HB 517 RECONSIDER ACTION
HB 517 RECONSIDER ACTION POSTPONED

EXECUTIVE ACTION ON SB 133

Motion: REP. WYATT MOVED SB 133 BE CONCURRED IN.

Motion: REP. KOTTEL MOVED TO AMEND SB 133 TO READ, "EACH PARTY IS ENTITLED TO FOUR PRE-EMPTORY CHALLENGES IN A 12-PERSON JURY AND THREE PRE-EMPTORY CHALLENGES FOR ALL JURIES LESS THAN 12."

Discussion: Mr. MacMaster thought it would be taken care of by deleting the amendment on line 7.

Motion/Vote: REP. KOTTEL MOVED A SUBSTITUTE AMENDMENT TO LEAVE THE WORDS, "NOT TO EXCEED FOUR." ON LINE 7, PAGE 2. The motion carried unanimously by voice vote.

Discussion: REP. BOHARSKI said there had been a long-standing tradition in Montana which would be changed by the bill and he did not see a compelling reason to do so. He planned to move to table the bill.

REP. HURDLE asked if there was a question about line 14 on page 1 as to whether the word should be civil or criminal.

CHAIRMAN CLARK believed that since "criminal" was not addressed in the title of the bill, there was a question as to whether it should be addressed at all in the bill as it was on line 14. He stated that Mr. MacMaster said the language was in there because of lines 17 - 19 and they wanted it clear that a criminal trial would still have 12 jurors.

REP. BILL TASH recounted his notes on the bill and that it was inconsistent with federal court rules.

Motion/Vote: REP. TASH MOVED TO TABLE. The motion carried 15 - 3, REPS. CAREY, WYATT and KOTTEL voted no.

EXECUTIVE ACTION ON SB 185

Motion: REP. AHNER MOVED SB 185 BE CONCURRED IN.

Motion/Vote: REP. SMITH MOVED TO AMEND SB 185. EXHIBIT 3 The motion carried unanimously.

Motion/Vote: REP. AHNER MOVED SB 185 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

Motion: REP. CAREY MOVED TO ADJOURN.

{Comments: This set of minutes is complete on one 60-minute tape.}

EXHIBIT 2
DATE 3/13/95
SB 185

Amendments to Senate Bill No. 185
Third Reading Copy

Requested by Rep. Liz Smith
For the Committee on the Judiciary

Prepared by John MacMaster
March 2, 1995

1. Page 3, line 10.

Following: "relief"

Insert: ", which must include an order that the department
reimburse the petitioner for court fees paid by the
petitioner"

SENATE BILL NO. 185

INTRODUCED BY VAN VALKENBURG

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE PROCESS BY WHICH A HABITUAL TRAFFIC OFFENDER IS PENALIZED; PROVIDING FOR ADMINISTRATIVE REVOCATION OF A HABITUAL TRAFFIC OFFENDER'S DRIVING PRIVILEGES; PROVIDING A METHOD FOR AN OFFENDER TO CONTEST THE DECLARATION; PROVIDING THAT CERTIFIED DRIVING RECORDS ARE EVIDENCE OF CONVICTIONS; PROVIDING FOR A MANDATORY MINIMUM SENTENCE FOR A PERSON DRIVING WHILE A LICENSE IS REVOKED BECAUSE OF A HABITUAL TRAFFIC OFFENDER DECLARATION; AMENDING SECTIONS 61-11-204, 61-11-207, 61-11-210, 61-11-211, 61-11-212, AND 61-11-213, MCA; AND REPEALING SECTIONS 61-11-205, 61-11-206, 61-11-208, AND 61-11-209, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-11-204, MCA, is amended to read:

"61-11-204. Department's duties. ~~Whenever it appears from (1)~~ If the records maintained in by the department show that a person's driving record brings him the person within the definition of an a habitual traffic offender, ~~as defined in 61-11-203(2),~~ the department shall:

(a) declare the person a habitual traffic offender;

(b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and

(c) notify the person in writing of the declaration and revocation.

(2) The notice must be sent by first-class mail to the most current address on record with the department. The notice must include a certified copy of the ~~forthwith certify two copies of that person's~~ driving record and ~~two~~ copies of all relevant abstracts of ~~conviction~~ convictions and bond forfeitures. ~~One copy of the record and abstracts shall be certified to the attorney general and one copy of the record and abstracts shall be certified to the county attorney for the county wherein the person is found. If the person is not licensed by Montana to drive a motor vehicle but is licensed in another state, the department may certify the copy of the records and abstracts to the attorney general and also to the county attorney for the county in which the person is found or, in the alternative, to the county attorney for the county of~~

1 ~~Lewis and Clark.~~ The notice must inform the person of the right under 61-11-210 to appeal the declaration
2 and revocation. Service of the notice is complete upon mailing.

3
4 **Section 2.** Section 61-11-207, MCA, is amended to read:

5 **"61-11-207. Abstracts admissible as evidence.** ~~Official~~ A copy of a driving record maintained by
6 the department, including abstracts of the records of convictions and bond forfeitures in the custody of the
7 department, certified in writing by the department to be a correct account of the said convictions and bond
8 forfeitures its records, may be admitted in evidence in any a judicial proceeding under this part upon
9 establishing the proper foundation. A certified driving record is evidence that the person was convicted
10 of each offense shown in the record. A copy of a driving record may be a copy of an original paper record,
11 a digital image of a paper record, or an electronically transmitted copy of a record."

12
13 **Section 3.** Section 61-11-210, MCA, is amended to read:

14 **"61-11-210. Court hearing Appeals.** (1) A person declared to be a habitual traffic offender may
15 file a petition in the district court in the county in which the person resides, or in Lewis and Clark County
16 if the person is not a resident of the state, challenging the declaration and revocation. The petition must
17 be filed within 30 days after the person received notice under 61-11-204. Receipt under 61-11-204 is
18 presumed to be on the third day after the date of mailing. After the petition is filed, a copy must be
19 promptly served on the county attorney of the county in which the petition was filed. The county attorney
20 shall represent the department in the proceeding. Proof of service must be filed with the clerk of the court
21 prior to a hearing or grant of relief. Untimely service or lack of service upon the county attorney waives
22 the right to a hearing. The filing of the petition does not stay enforcement of the revocation.

23 (2) Upon receipt from the county attorney of notice of the petition, the department shall give the
24 county attorney a certified copy of the abstracts of the records of convictions and bond forfeitures upon
25 which the habitual traffic offender declaration was based.

26 (3) A hearing date must be set and at least 10 days' notice of the date must be given to the
27 parties. The scope of the hearing is limited to whether ~~At the time and place designated in the order, the~~
28 ~~court shall hold a hearing upon the show cause order. If the court finds that the defendant petitioner is not~~
29 ~~the person named in the verified complaint or that he is not~~ certified abstracts of convictions and bond
30 forfeitures upon which the habitual traffic offender declaration was based and whether the petitioner is a

1 a habitual traffic offender ~~as defined in 61-11-203(2), the proceedings shall be dismissed.~~ The petitioner
2 has the burden of proving that the department's actions are invalid or that its records are erroneous.

3 (4) If the court finds that the ~~defendant~~ petitioner is the same person named in the verified
4 complaint declared by the department to be a habitual traffic offender and that the ~~defendant~~ petitioner is
5 an a habitual traffic offender as defined in 61-11-203(2), the court shall so find and adjudge the defendant
6 an habitual traffic offender, and by appropriate order direct the person so adjudged to surrender to the court
7 his license to operate a motor vehicle on the streets and highways of this state dismiss the petition. If the
8 court finds that the petitioner is not the person declared by the department to be a habitual traffic offender
9 or that the petitioner is not a habitual traffic offender, the court shall grant the petition and provide the
10 petitioner with appropriate relief, WHICH MUST INCLUDE AN ORDER THAT THE DEPARTMENT REIMBURSE
11 THE PETITIONER FOR COURT FEES PAID BY THE PETITIONER.

12 (5) Upon a finding adverse to the ~~defendant~~ petitioner, the clerk of the court ~~wherein the hearing~~
13 ~~is held~~ shall file with the department a copy of the court's order, together with the ~~defendant's~~ petitioner's
14 driver's license if the license has not been previously surrendered. If the ~~proceeding is dismissed~~ petition
15 is granted, the clerk of the court ~~wherein the hearing is held~~ shall file with the department a copy of the
16 court's order ~~dismissing the proceeding, which granting the petition.~~
17 The order shall must state the grounds upon which the dismissal relief was based, granted and shall must
18 specify the court findings on the conviction points, if any, which that have been accrued by the defendant
19 petitioner. The department shall then correct the petitioner's driving record to comport with the court's
20 specific findings."

21
22 **Section 4.** Section 61-11-211, MCA, is amended to read:

23 "61-11-211. Department to revoke license of habitual offender -- ~~method of removal of points upon~~
24 ~~revocation. Upon receipt of a court order declaring an individual a~~ After it declares a person to be a habitual
25 offender, the department shall revoke the person's driver's license or driving privilege of the individual
26 named in the order for a period of 3 years from the date of the order declaration, subject to the provisions
27 of 61-2-302. Additionally, the The department shall remove from that individual's the person's record those
28 the habitual offender points that were certified to the county attorney in the certification required by
29 61-11-204 upon which the habitual traffic offender designation was based."
30

Section 5. Section 61-11-212, MCA, is amended to read:

"61-11-212. Penalties. A person who has been ~~adjudged a~~ declared to be a habitual traffic offender may not be issued a license to operate a motor vehicle in this state until:

(1) a period of 3 years has elapsed from the date of the ~~final order of the court adjudging the~~
~~person a habitual traffic offender~~ declaration, subject to the provisions of 61-2-302;

(2) the person has met the requirements of all applicable laws and rules relating to the licensing of motor vehicle operators in this state; and

(3) the person files with the department, and maintains for a period of 3 years, proof of his financial responsibility in the limits required by law."

Section 6. Section 61-11-213, MCA, is amended to read:

"61-11-213. Habitual traffic offender operating motor vehicle guilty of misdemeanor. A person ~~found~~ who is declared to be a habitual traffic offender under this part ~~and~~ who operates a motor vehicle in this state ~~while the order of the court prohibiting the operation remains in effect~~ during the period of revocation of the person's driver's license or driving privileges is guilty of a misdemeanor and upon conviction shall be imprisoned for a period of not less than 14 days or more than 1 year or fined not more than \$1,000, or both, and the department, upon receiving a record of the conviction of a person under this section, shall extend the period of revocation for an additional 1 year. However, in cases in which the prohibited operation of a motor vehicle by a habitual traffic offender is necessitated in a situation of extreme emergency in order to save life, limb, or property, ~~he~~ the person may not be considered guilty of a violation under this part."

NEW SECTION. Section 7. Repealer. Sections 61-11-205, 61-11-206, 61-11-208, and 61-11-209, MCA, are repealed.

-END-